UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF ALABAMA

In re

SOUTHERN FLOORING
DISTRIBUTORS INC.,

Debtor

Case No. 99-2729-WRS
Chapter 7

MEMORANDUM DECISION

This Chapter 7 case is before the Court upon the motion for reconsideration filed by Allomet Partners, LTD. (Doc. 162). The Bankruptcy Administrator opposes the motion. (Doc. 170). Before considering the motion on its merits, the Court will review the history of these proceedings.

I. HISTORY OF PROCEEDINGS

On June 2, 1999, Southern Flooring filed a petition in bankruptcy pursuant to Chapter 11 of the Bankruptcy Code. It appears that Southern Flooring is a distributor of flooring materials such as carpet and floor tile. Upon review of the schedules and statements in the Court's record, it would appear that the Debtor was large by local standards, but not an extremely large concern. For example, its annual gross revenues for the three years prior to the time it filed bankruptcy were approximately $35 million.

Shortly after the bankruptcy filing, the Debtor (who was then a debtor-in-possession) moved to employ Allomet Partners, LTD as a consultant. (Doc. 8). Paragraph 4 of the Application states, in part, as follows:

> Allomet would be serving as financial consultants and managers to assist in financial and reorganization matters in connection with this bankruptcy proceeding. In particular Allomet will be responsible for reviewing and assisting in implementation of financial plans and systems, assisting in the preparation of a plan of reorganization.

Allomet was paid $155,000 in fees plus an additional $13,000 in expenses over an eight-week period prior to the bankruptcy filing.[1] The Southern Flooring bankruptcy case is unusual in that it converted to a case under Chapter 7 on August 16, 1999 slightly more than two months after the Chapter 11 petition was filed. It appears to the Court that there was never a realistic chance that the Debtor could reorganize its affairs.

Nothing of significance to the pending matter took place until February 2004, when the Bankruptcy Administrator filed her "Motion for Determination of Allowable Professional Fees and Expenses to Allomet Partners, LTD and Motion for Disgorgement of Professional Fees Paid." (Doc. 154). The Bankruptcy Administrator alleges, and it is not disputed by Allomet, that it received a retainer in the amount of $17,474.40, which was authorized by the Court, and payments in the amount of $45,000.00, which were not authorized by the Court.

On July 31, 2000, Allomet Partners filed a proof of claim seeking fees in the amount of $47,094.51. (Claim No. 220). This amount is sought in addition to the $17,474.40 and $45,000.00 figures discussed above, for total compensation during the post bankruptcy filing of $109,568.91. Allomet Partners filed an application for compensation, in accordance with Rule 2016, Fed. R. Bankr. P., at the time it filed its proof of claim. The application was stapled to the proof of claim and filed in the Court's claims file. Had the application been filed in the case file,

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[1] See, the Affidavit of Charles A. Soule, which is attached to the Application. (Doc. 8). In addition, see Question No. 9 in the Debtor's Statement of Financial Affairs. (Doc. 37).

the Court's mechanism for the handling and disposition of such applications would have been triggered and the Court would have acted on the application within a reasonable period of time. Unfortunately, that did not happen. The Court does not routinely search the attachments to proofs of claims for errant motions. Therefore, the Court was not aware of Allomet's application for compensation until February 2004.

On February 23, 2004, the Court issued a Notice of Hearing, setting the Bankruptcy Administrator's motion for hearing on April 7, 2004. When the Bankruptcy Administrator's motion was called on April 7, 2004, the Bankruptcy Administrator was present as was Collier H. Espy, Jr., the attorney for the Debtor. No appearance was made for Allomet Partners and the Court entered a disgorgement order, by default, ordering Allomet Partners to disgorge the $62,474.40, that it had been paid. (Doc. 157).

II. THE MOTION FOR REHEARING

On June 4, 2004, Allomet Partners filed a motion for reconsideration, claiming that it had not received notice of the April 7, 2004 hearing. (Doc. 162). Allomet further claims that it telephoned the Bankruptcy Administrator and that its telephone calls were unanswered. The Bankruptcy Administrator did not deny this allegation in her response. (Doc. 170). The Court notes that there is a discrepancy between the address at which the Bankruptcy Administrator's motion was served and the address to which the Notice of Hearing was mailed.[2] Due to this discrepancy, the Court will not default Allomet Partners and consider its motion on the merits.

[2] The Bankruptcy Administrator served her motion on: "Allomet Partners, Ltd, 1220 Bridgewater Lane, Chattanooga, TN 37405." The Notice of Hearing was mailed to: "Allomet Partners, Ltd., Attn: Charles A. Soule, Pres., 1012 Ariel Lane, Chattanooga, TN 37405."

The first issue is whether the collection of the postpetition billings, without the Court's approval, should result in a forfeiture of all fees. This Court discussed, in considerable detail, the process for making application for professional fees and possible sanctions if that process is not observed. In re: Tri-State Plant Food, Inc., 273 B.R. 250 (Bankr. M.D. Ala. 2002). The Court will not repeat its discussion here. Suffice to say, the Court is of the view that under the facts of this case, existing precedent supports the proposition that fees may be denied in their entirety. As this case has become, from a procedural standpoint, disjointed, the Court elects not to stand on ceremony and will disregard the fact that amounts were collected which had not been authorized by a court order in accordance with Rule 2016, Fed. R. Bankr. P. Therefore, the Court will consider Allomet's application for professional fees on its merits.

III. THE MERITS OF THE ALLOMET FEE APPLICATION

Compensation paid professionals such as Allomet Partners is governed by the provisions of 11 U.S.C. § 330; see also, In re: Southern Diesel, Inc., 309 B.R. 810 (Bankr. M.D. Ala. 2004). The Court will concentrate its analysis on the provisions of § 330(a)(4)(A), which does not allow compensation for services which are not "reasonably likely to benefit the debtor's estate; or necessary to the administration of the case."

In this case, Allomet Partners billed and collected $150,000.00 for a six- to eight-week period prior to the bankruptcy filing. Now they are billing an additional $100,000.00 for the several weeks the case was pending after the bankruptcy filing. All told, Allomet Partners seeks a quarter of a million dollars for less than three months' services for a case which was quite plainly "dead on arrival." As set forth above, Allomet Partners was hired to aid in the

reorganization efforts. Given their prior connection with the Debtor, they knew or should have known that their efforts would be futile.

The Court notes that Allomet's services were not completely unnecessary here. Allomet assisted in the preparation of some accounting reports and provided assistance in connection with the agreement with CIT for the use of cash collateral on a post-petition basis. However, the value of the services provided does not begin to approach $100,000.00. The Court is familiar with these proceedings and the Debtor's business. In addition, the Court is familiar with amounts paid for such services in analogous cases. Considering all that may have been reasonably attempted here, any amount in excess of $20,000.00, approximately $10,000.00 per month, would be unconscionable. Accordingly, the Court will allow Allomet Partners a claim of $20,000.00, and disallow any amounts requested in excess of that. As Allomet Partners has been paid $62,747.40, it shall remit the difference (i.e. $42,474.40) to the Court.

The allowance of applications for professional fees is not an exact science. Allomet Partners was hired to assist in the reorganization of the Debtor's affairs. Allomet's President Charles A. Soule, describes himself as a "Certified Turnaround Professional." To be sure, the actual reorganization of a failing business, or a good faith attempt to reorganize a failing business, requires highly-skilled professionals who may justifiably demand compensation to match the value of their skills. The Court does not dispute that Allomet's personnel may well be entitled to the hourly rates billed here in appropriate cases. However, given the facts of this case, it should have been apparent that there was nothing to "turn around." Had Allomet not had its prior connection with the Debtor, it perhaps could be argued that it should be compensated for

making a noble but failed effort to reorganize the Debtor's business. It is the combination of three factors which makes the amount sought untenable: (1) Allomet's prior connection with the Debtor, putting them on notice reorganization was not possible; (2) the total amount of fees billed; (3) the comparison of the Debtor's size with the amount billed. (i.e. a quarter of a million dollars for three months services for a business with gross revenues of $35 million).

The Court will enter an order on a separate document in accordance with Rule 9021, Fed. R. Bankr. P.

Done this 3rd day of February, 2005.

/s/ William R. Sawyer
United States Bankruptcy Judge

c: Collier H. Espy Jr., Attorney for Debtor
Teresa R. Jacobs, Bankruptcy Administrator
Britt Batson Griggs, Attorney for Allomet
Tom McGregor, Trustee